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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/736,465
Filing Date: December 15, 2003
Appellant(s): EUBANKS ET AL.

Jimmie R. Oaks
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 24 April 2008 appealing from the Office action mailed 2 November 2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

Scarnato et al., US 3,673,779 A, 4 July 1972

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 7 and 8 were rejected under 35 U.S.C. 102(b) as being anticipated by Scarnato et al., hereafter Scarnato. This rejection is set forth in a prior Office Action, mailed on 2 November 2004.

Scarnato discloses in combination with a mowing implement equipped with a rotary disc cutter bar (150) having a gear housing (165) extending transversely, relative to a forward direction of travel during mowing operation, and including a plurality of transversely spaced, knife-carrying rotary discs (154-157) mounted, and being respectively driven, for rotating in desired directions above an upper surface of said gear housing (165) for cutting and delivering crop into a discharge zone (125) at the rear of the cutter bar (150), a crop processing device (8, 11) located in said discharge zone (125) just downstream from said cutter bar (150), and a crop-lifting arrangement for directing cut crop delivered by said rotary discs (154-157) upwardly and rearwardly from said cutter bar (150) so as to be in a favorable location for engagement by said crop processing device (8, 11), the improvement comprising:

said crop-lifting arrangement including a lip (170) extending transversely across, and projecting substantially upright from, at least a rear region of said cutter bar (150) located just forward of said crop processing device (8, 11); and

said lip (170) extending closely adjacent to, and to a height above a path traced by knives (174) of said knife-carrying rotary discs (154-157), as per claim 1; and

wherein said lip (170) is inclined upwardly and forwardly at an angle of approximately 60° to the horizontal, as per claim 7; and

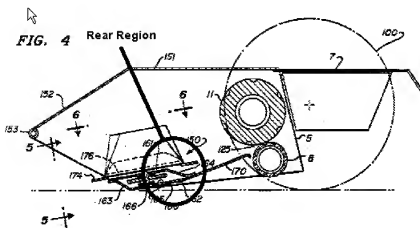
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wherein said lip (170) is formed integrally with said gear housing (165), as per claim 8.

(10) Response to Argument

Claim 1 requires a crop-lifting arrangement with a lip that projects substantially upright from at least a rear region of a cutter bar. The lip must also extend closely adjacent to, and to a height above, a path traced by the knives of the rotary discs.

The appellant argues that the lip (170) of Scarnato does not extend upright from the box structure (160). The appellant is arguing more than is claimed. Claim 1 simply requires that the lip project substantially upright from at least a rear region of the cutter bar. Because the appellant has failed to set forth any structure in the claims or guidance in the specification for defining the “rear region”, the examiner has taken the “rear region of the cutter bar” of Scarnato to be any of the area lying between the vertical axis through which the rotary disc rotates to just past the edge of the rear knife itself in the horizontal direction, and vertically within the rear cutting knife tip down to the lower edge of the side panel (5), as seen here in Scarnato’s Figure 4:



This definition is also consistent with the dictionary's definition which defines a "region" as a large, usually continuous segment of a surface or space; an area.

Furthermore, the examiner is defining the area from which the lip projects substantially upright to be a point lying within this rear region, and not the plane of the bottom wall (162) as argued by the appellant.

As far as "projecting substantially upright", there is no guidance in the appellant's specification regarding this phrase, leaving no definition. While the dictionary defines "upright" as being in a vertical position or direction, the appellant has used the word in a more liberal sense and the examiner has followed suit. Scarnato's lip (170) projects upwardly, and not vertically, from the rear region, as does the appellant's lip. From the claim language set forth, it is unclear how the degree of which the appellant's lip veers from vertical to become "substantially upright" is any different from the degree of Scarnato, as the appellant is arguing.

Let it also be noted that the claim language fails to distinguish which way the lip should slant (i.e. from front to rear or rear to front). This is how the examiner was able to apply the Scarnato reference. While the lip of the instant invention slopes from the rear to the front, as seen in Figure 5, the examiner was able to use Scarnato's lip (170), sloping from the front to the rear, because of the lack of structure contained in the body of claim 1.

Regarding the requirement that the lip extend closely adjacent to a path traced by the knives, as the examiner indicated in the Office Action dated 2 November 2004, the phrase "closely adjacent to" is a relative phrase. The phrase "closely adjacent to" is an immeasurable distance of which, again, the appellant has failed to define in the specification. As a matter of fact, the only indication of a special relationship between the lip height and the knives given in

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the appellant's specification is that the lip must be capable of moving material from the knives upwardly and rearwardly to the conditioner assembly. Scarnato's lip (170) is closely adjacent enough to the knives to do just this.

Scarnato et al. effectively highlights many ambiguous instances in claim 1.

The rejection to claim 7 has been withdrawn.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Alicia M Torres

/Thomas B Will/

Supervisory Patent Examiner

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Conferees:

Heather Shackelford /Heather Shackelford/

Thomas B. Will /tbw/